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OFFICE OF PETITIONS

In re Application of :
Thomas J. Krall et al :
Application No. 09/781,656 : DECISION ON PETITION
Filed: February 12, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 17472 USA :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed June 23, to revive the instant nonprovisional application for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is dismissed as **MOOT**.

Petitioner states that the instant nonprovisional application became the subject of an application filed in an eighteen-month country on February 8, 2002 and February 11, 2002. A review of the file record discloses that a Notice to Rescind was received in the U.S. Patent and Trademark Office on January 31, 2002.

An applicant who makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request were never made. See Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), Official Gazette (July 1, 2003).

In the instant application, a notice to rescind was filed prior to the filing date of counterpart applications in eighteen month publication countries. Therefore, since receipt in the U.S.

Patent and Trademark Office of the request to rescind prior to the filing date of a corresponding application in an eighteen-month publication country resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

Since this application is not in fact abandoned for the reason stated above, the petition fee of \$1,300 is unnecessary and will be credited to Deposit Account No. 15-0875 in due course.

This application is being forwarded to Technology Center AU 1732 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.



Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy